

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	Case No. 4:20-CR-00212
)	
DEBRA LYNN MERCER-ERWIN (1))	
KAYLEIGH MOFFETT (2))	
)	
Defendants.		

**NOTICE OF DISCOVERY VIOLATIONS PURSUANT TO
RULE 16 AND REQUEST FOR AN EVIDENTIARY HEARING**

Defendant Debra Lynn Erwin (“Ms. Erwin”), by and through her attorneys, Joe E. White, Jr., Charles C. Weddle III, Kate C. White, and Matthew P. Cyran, and Defendant Kayleigh Moffett (“Mrs. Moffett”), by and through her attorney, Brett Behenna (collectively referred to as the “Defendants”), respectfully submit this Notice of Discovery Violations Pursuant to Rule 16 and Request for Evidentiary Hearing. In support of this Notice, the Defendants state as follows:

Rule 16 Requirements

Rule 16 requires the government to produce “books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government’s possession, custody, or control and . . . the item is material to preparing the defense” Fed. R. Crim. P. 16(a)(1)(E)(i).

It has come to counsel’s attention that the government met with Federico Machado (“Fred Machado”) in Dallas, Texas in January 2021. At that meeting, agents and

government counsel, Ernest Gonzalez, interviewed Fred Machado and questioned him about the facts in this case. It is also understood, that Fred Machado took a polygraph at that time. This meeting and polygraph were never disclosed by the government. The government has produced recordings and reports of interviews with Fred Machado in the summer of 2019 and in September 2020. Counsel has reason to believe that the interview in January 2021 contains exculpatory information related to the Defendants. Counsel has directly requested via email any reports, agent notes, and recordings of the government's interview with Fred Machado in January 2021. The government has failed to respond to this request.

Fred Machado is not listed on the government's witness list. He is not a prospective witness in this case, in part because he is in Argentina purportedly fighting his extradition. Therefore, this report is not Jencks material, which would allow the government to withhold this report until after the witness testifies.

Given that any mention of this meeting was withheld when other Fred Machado interviews were provided, counsel has reason to believe that Fred Machado provided exculpatory evidence related to the Defendants' defense in this case. Such evidence would necessarily have to be produced to the Defendants. *Brady v. Maryland*, 373 U.S. 83 (1963). Counsel requests an evidentiary hearing to determine: 1) whether a report (audio or written) exists memorializing this interview, 2) whether agent notes exist regarding this interview, 3) whether a polygraph was given to Fred Machado, 4) the results of that polygraph, 5) whether Fred Machado gave exculpatory information about the Defendants, and 6) why this report was hidden from counsel up until the eve of trial.

CONCLUSION

Based on facts and argument stated above, the Defendants respectfully request the production of any and all statements made by Fred Machado and an evidentiary hearing to determine why this information was withheld.

Respectfully submitted,

s/ Joe E. White, Jr.

JOE E. WHITE, JR. OBA #12930
CHARLES C. WEDDLE III OBA #18869
KATE C. WHITE OBA # 30930
MATTHEW P. CYRAN OBA # 16918
WHITE & WEDDLE, P.C.
630 N.E. 63rd Street
Oklahoma City, Oklahoma 73105
(405) 858-8899
(405) 858-8844 FAX
joe@whiteandweddle.com
charles@whiteandweddle.com
kate@whiteandweddle.com
matt@whiteandweddle.com

*Attorneys for the Defendant,
Debra Lynn Mercer-Erwin*

s/ W. Brett Behenna

W. BRETT BEHENNA OBA #30485
BEHENNA GOERKE KRAHL & MEYER
Oklahoma Tower
210 Park Avenue, Suite 3030
Oklahoma City, OK 73102
(405) 232-3800
bb@lawfirmokc.com

*Attorney for the Defendant,
Kayleigh Moffett*

CERTIFICATE OF DELIVERY

☒ I hereby certify that on this 6th day of April, 2023, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing, which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Joe E. White, Jr.

Joe E. White, Jr.